

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

TOYBE BENNETT,

Defendant.

Case No. 05-CR-1067-5 (KMK)

ORDER


KENNETH M. KARAS, District Judge:

On November 5, 2007, the Court imposed a total sentence of 70 months imprisonment on Defendant Toybe Bennett ("Defendant") in connection with the indictment in this case. The Court received a letter from Defendant dated June 26, 2008, in which Defendant asks the Court's help with credit for time served prior to his sentence in this case and with his facility designation by the Bureau of Prisons. The Court directed the Government to respond to Defendant's letter, and the Government submitted such a letter-response dated July 18, 2008.

For the reasons set forth in the Government's letter-response, the issues raised by Defendant are entirely within the control of the Bureau of Prisons ("BOP") and there is no action appropriate for the Court to take at this time. With respect to Defendant's claimed credit, this Court is without power "to order the BOP to either grant or deny credit or to disregard the BOP's calculations." *United States v. Whaley*, 148 F.3d 205, 206 (2d Cir. 1998). In any event, for the reasons explained by the Government, the Court does not now see any time served for which Defendant has not already received credit (although it does not decide that question). With respect to Defendant's facility designation, the Court's recommendation at sentencing was merely advisory (as the Court advised Defendant at the time of entering the recommendation at sentencing) and Defendant must pursue any desired facility transfer according to the BOP's regulations. *See* 18 U.S.C. § 3621 ("The Bureau of Prisons shall designate the place of the prisoner's imprisonment.").

SO ORDERED.

Dated: July 29, 2008
White Plains, New York


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE